ments were lacking. *Dennis* v. *Slyfield,* 117 Fed., 474. On the other hand, in countries where the English doctrine does not prevail, the absence of consideration would not prevent the admiralty enforcing an agreement otherwise within its jurisdiction. In other words, the admiralty has not yet evolved any law of contracts of its own except in regard to the secondary matter of testing their maritime nature. It has left this matter of formation of contract, the essentials of its validity and the requisite evidentiary conditions, to local law, common or statutory. Doubtless every local law, however, tends to impair uniformity. This can only be avoided by a general code of maritime law. Until it is promulgated, uniformity will be impossible. The logical effect of the decision in the *Erickson* case will be to emphasize the necessity for a complete revision and codification of our maritime law. Its development has been so interwoven with local law that a somewhat chaotic situation may develop, if the effect of this decision is correctly estimated to be a divorcement from the local law in respect of contracts before anything has been prepared to take its place.

The principle of the decision would, it seems, have been equally fatal to the statute of frauds if the action had been at law in a state court. A writ of error from the Supreme Court of the United States could have been invoked to review its judgment and the same result would have followed as is accomplished by the decision in the proceeding in admiralty.

GEORGE L. CANFIELD.

SHOULD A CORRECT VERDICT BE SET ASIDE BECAUSE THE JURY FAILED TO FOLLOW ERRONEOUS INSTRUCTIONS?—One of the common grounds of a new trial is that the verdict is contrary to law. What law is meant,—the law as it really is, or the law that was given to the jury by the court's instruction? Most cases hold to the latter view. It is the duty of the jury to take the law from the court, whether the court in so giving it is right or wrong. Hence, the jury violate their duty if they fail to follow instructions, even if the instructions are wrong, and a verdict based on a breach of the jury's duty cannot be allowed to stand, even though intrinsically correct. *Talley* v. *Whitlock,* (Ala., 1917) 73 So. 976; *Gartner* v. *Mohan,* 39 S. D. 202; *Yellow Poplar Lumber Co.,* v. *Bartley,* 164 Ky., 763; *Soderburg* v. *Chicago St. P. M. & O. Ry. Co.,* 167 Ia., 123; *Freel* v. *Pietzsch,* 22 N. D., 113; *Barton* v. *Shull,* 62 Neb., 570; *Dent* v. *Bryce* 16 S. C., 14; *Murray* v. *Heinze,* 17 Mont., 353.

The argument on which this rule is founded is well expressed by the Supreme Court of Montana in *Murray* v. *Heinze, supra,* where the court said: "But counsel for the appellant contend that, the instruction being erroneous, the court erred in setting aside the verdict because of the fact that the jury wholly disregarded it . . . . This is the first time it has been seriously contended in this court that the jury have the right to determine the law in an ordinary suit at law and to absolutely disregard the instructions of the court on the ground that, in the opinion of the jury, the instructions of the court are erroneous. If the contention of the appellant is to be upheld, what may we not anticipate as the result in the administration of the law in this state? If the jury may rightfully invade the province of the court, why may not

the court retaliate by invading the province of the jury in determining questions of fact? As counsel for the respondent suggest, if the contention of the appellant is correct, then logically there is an appeal in all cases upon questions of law from the trial court to the jury. And as counsel for respondent further suggest in their argument, if the jury may determine the law, an attorney arguing the case may say to the jury: 'The court will charge you that the law is so and so, but I say to you the court is wrong!'"

But now and then we find a case where the court refuses to be terrorized by this reasoning. Such a case is *Public Utilities Co.*, v. *Reader* (Ind. App. 1919) 122 N. E., 26. The court held that a verdict was not "contrary to law" merely because is was contrary to an erroneous instruction given to the jury. And with the Indiana appellate court stand a few others who take the same view. *Lucken* v. *Lake Shore & M. S. R. R. Co.*, 248 Ill., 377; *Pitts* v. *Thrower*, 30 Ga., 212; *Van Vacter* v. *Brewster, Solomon & Co.*, 1 Sm. v. M. (Miss.), 400; *Cockrane* v. *Winburn*, 13 Tex. 143.

The argument of the majority sounds more like an excuse than a reason. Nobody claims that the jury has the right to pass on the law, any more than that the court has the right to do a great many things which it constantly does and which constitute error in the trial of cases. But if it appears that the jury was right on the law and the court was wrong, what should be done about it?

The real question is, what is the purpose of the trial,—to get a *correct result*, or to get it in a *correct manner?* Thousands of errors are committed every day by our courts in rulings made at the trial of cases, but they do not produce new trials unless prejudice has resulted from them. It is everywhere agreed that technical error and prejudicial error are very different things. Error which does not affect the final result is constantly ignored. There is no potency in error as such, any more than in carelessness as such. One can be as careless as he pleases, and if no harm comes from it there is no liability. Courts may make endless errors in trying cases, but if no harm comes from them they are very properly disregarded.

There is no apparent reason why the particular error here discussed should stand on any different basis from other errors. The dreadful spectacle of an attorney appealing to the jury to overrule the court in the law, which the Montana court so tragically suggests, is nothing but a bogie, for it is perfectly clear that such an appeal would constitute so flagrant a contempt of court that it could be instantly checked if anyone had the hardihood to attempt it. That being so, the rule requiring a correct verdict to be set aside when contrary to bad instructions, must be based upon the need of punishing the jury for disobedience. But setting aside the verdict does not punish the jury,—it only penalizes the party who gets the verdict. It could perhaps be suggested that the acceptance of such verdicts might develop insubordination among juries. But no such result has been noted in jurisdictions where they are accepted. The imposition of heavy penalties is a mark of social mal-adjustment. It was once thought that the prevention of insubordination among citizens required capital punishment for a score of petty crimes; that military discipline could be maintained only by frightful

punishments for the slightest cases of disobediences. Judges long contended that the allowance of amendments would put such a premium on careless pleading that the whole system of legal procedure would go to ruin. All that is being gradually discarded. Destroying verdicts as a means of disciplining inattentive or disobedient juries is on a par with shooting hostages to subdue a recalcitrant population.

The truth appears to be that we have in this rule merely a survival of the once common doctrine of reversal for technical error, coupled possibly with an inherited fear that the judges, once the representatives of the king and the privileged classes, might lose their prestige by acknowledging that a jury could ever be right when it differed from the court. But we are rapidly losing our veneration for conventionality, and we no longer canonize rules of procedure in theory even though in practice we still sometimes insist that a good result is bad because it was not produced in the orthodox way. If the courts are to merit public confidence they must think more about their duty to the people and less about themselves, more about the justice of their results and less about the regularity of their methods.

Exaggerated self-consciousness, in an institution as in an individual, is always likely to produce excessive formalism. The more fully the interests of the litigants occupy the attention of the court, the more completely will technicalities of procedure lose their power to obstruct.

E. R. S.

NEGLIGENCE — THEATERS AND SHOWS — ASSUMPTION OF RISK — SPECTATORS AT A BASEBALL GAME.—The common law right of recovery as regards one who knowingly or indifferently incurs a risk in the course of his employment not necessarily incident thereto finds expression in the cases of *Southcote* v. *Stanley,* 1 H. & N., 247: *Wilkinson* v. *Farrie,* 1 H. & C., 631: *Chapman* v. *Rothwell,* El.B. & E., 168: also COOLEY ON TORTS, (3rd Ed.) 1042-1057. Further distinctions taken on the liability of an occupier of premises are found in the case of *Indermaur* v. *Dames,* L. R. 1 C. P. 274, where the static relations between such occupiers and one injured thereon are classified. Situations involving these questions may arise under a variety of circumstances. Probably the greater number grow out of the relation of master and servant. *Sullivan* v. *New Bedford, etc., R. Co.,* 190 Mass., 288: *American Car and Foundry Co.* v *Duke,* 218 Fed. 437. In a recent decision, the Supreme Court of Washington was called upon to determine whether one who pays admission to the grand stand to see a baseball game, knowing the nature of the game and having a choice of screened or exposed seats, choosing a seat exposed to wild throws and foul balls, may show in evidence as proof of negligence, defendant's plans for the park, which called for screens to protect the area in which he sat. The court held the evidence admissible and that the plaintiff's right to recover was properly submitted to the jury who found in his favor. *Kavafian* v. *Seattle Baseball Club Association* (Wash. 1919) 177 Pac. 776.

Cases precisely in point are few. In *Wells* v. *Minneapolis Baseball and Athletic Association,* 122 Minn. 327, 142 N. W. 706, it was held that if plain-